IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.131 Of 2000.

Date of decision: June 20th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Suneharu and Others. ……. Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.V.K.Verma, Addl.Advocate General.

For the respondents: Mr.Subhash Sharma, Advocate.

Surinder Singh, J(oral):

The respondents were put on trial under Sections 147, 447, 427 and 379 of the Indian Penal Code, before the learned Additional Chief Judicial Magistrate, Sundernagar, in Criminal Case No.214-I/95/58-II/95. The learned trial Court acquitted them vide its judgment dated 3.12.1999 against which instant appeal has been filed.

Leave to appeal was granted by this Court on 5.4.2000. Now the matter is being finally heard.

I have heard Shri V.K. Verma, learned Additional Advocate General for the State and Shri Subhash Sharma, Advocate, for the respondents and have gone through the record of the learned trial Court.

Whether reporters of local Papers may be allowed to see the judgment? Yes.

In brief, the prosecution story can be stated thus:-

The complaint Ext.PB was filed by the complainant Jai Gopal (PW1), against the respondents herein alleging the illicit cutting and removing of two trees, one of **Tuni** and another of **Sheesham** from his own Khasra No.277, situated in Mohal Kangu, dishonestly and without his consent. On the basis of aforesaid complaint, FIR Ext.PW8/B was formally registered under Sections 147, 447 and 427 of the Indian Penal Code. The police during investigation of this case, got the land demarcated from Bharoo Ram (PW5), Field Kanungo, Dehar circle with the assistance of Patwari Daulat Ram (PW6). Both the revenue officials had shown the trees having been cut and removed from Khasra No.277, aforesaid. The timber was taken into possession and given on supurdari to Jagat Ram, vide memo Ext.PC. The Police had also prepared site plan Ext.PW8/A and also took jamabandi Ext.PW8/C into possession. After recording the statements of the witnesses under Section 161 of the Code of Criminal Procedure, the case was presented in the court below for trial. Learned trial Court found a prima-facie case against the respondents under Sections 447, 427 read with Section 149 of the Indian Penal Code, accordingly, notice of accusation was put to each of the respondents, to which they denied.

To prove its case, the prosecution had examined the complainant Jai Gopal (PW1), Amar Singh (PW2), Dagu Ram (PW3), Kali Ram (PW4) Bharoo Ram, Field Kanungo (PW5), Daulat Ram Patwari (PW6), Inspector Hans Raj (PW7) who presented the challan and ASI Mahesh Kumar, Investigating Officer (PW8).

The respondents were also examined under Section 313 of the Code of Criminal Procedure. They denied the circumstances put each of them. They did not lead any evidence in defence. After hearing arguments and upon going through the record, the learned trial Court acquitted the respondents.

The state felt aggrieved by the impugned judgment of acquittal and assailed it by means of this appeal on the grounds that PWs 1 to 4 were reliable witnesses and their testimony was brushed aside without any rhyme and reason and PW5 Bharoo Ram, the then Field Kanungo had demarcated the land in the presence of the parties and prepared map Ext.PW5/A on the spot showing the place of occurrence which fell in the ownership and possession of the complainant therefore. The judgment of acquittal is liable to be set-aside.

Upon hearing the parties, I have found no fault in the impugned judgment of acquittal passed by the learned trial Court, on the ground that the prosecution has miserably failed to prove that the trees in question were cut from the land, which was owned and possessed by the complainant. The main stay was laid on the statement of PW5 Bharoo Ram, Field Kanungo, who is alleged to have demarcated the land. Legally, no revenue official not less the rank of Assistant Collector IInd Grade, is competent to demarcate the land. Patwari is not competent to prepare and issue any tatima unless verified by the Kanungo. The tatima Ext.PW6/A prepared by Daulat Ram, Patwari shows that both the trees were felled on the boundary of Khasra No.277 of which complainant has been

shown as one of the co-owners but as per jamabandi for the year 1988-89, it has been recorded in possession of the non-occupancy tenants.

There is no demarcation report except tatima Ext.PW5/B alleged to have been prepared at the time of demarcation by Kanungo Bharoo Ram, which shows that one tree of Sheesham was felled in Khasra No.277 and another in Khasra No.276 wherein Jai Gopal is one of the co-owner, but it is in the possession of Sahlo s/o Haria as non-occupancy tenant. Both the parties were earlier locked in litigation as is evident from the copy of judgment Ext.PA. All the above facts were well noticed by the learned trial court, while passing the judgment of acquittal. The view taken by the learned trial Court is quite reasonable and factually sustainable. Hence, no interference is required, accordingly, the appeal is dismissed. The respondents are discharged of their bail bonds executed by them at any time during the proceedings of this case.

June 20th, 2007. **(Surinder Singh)**
(PDS) **Judge**.